92-261

Supreme Court, U.S.
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NUMBER 92-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

APPENDIX TO PETITION

Volume I: Pages A001 - A060

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IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,
Defendants-Below,
Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs-Below,
Appellees.

No. 215, 1992

Submitted: 15 June 1992
Decided: 25 June 1992

Before VEASEY, Chief Justice,
MOORE & WALSH, Justices.

O R D E R

This 25th day of June, 1991, it appearing that:

(1) On May 26, 1992 the appellants filed a notice of appeal purporting to appeal from an order of the Court of Chancery dated May 20, 1992. That order, titled, "AMENDED FINAL ORDER AND JUDGMENT,"

inter alia, granted injunctive relief in favor of appellees but expressly reserved jurisdiction to the Court of Chancery "to determine any application in matters pending as of May 4, 1992" and specifically, to award counsel fees arising from a determination that appellant's counsel had violated chancery Court Rule 11. As of the date of the filing of this appeal, the Court of Chancery had not entered any further order implementing its retained jurisdiction.

(2) On May 29, 1992, appellants were directed to show cause why this appeal should not be dismissed as an appeal from an apparent interlocutory order, taken without compliance with Supreme Court Rule 42. Appellants have responded to the Notice to Show Cause and contend that the order appealed from is final and appealable because the trial court has labeled

its order as "FINAL."

(3) An order is final and appealable when the trial court has clearly declared its intention that the order be the court's final act in disposing of all justiciable matters within its jurisdiction. J. I. Kislak Mortgage Corporation of Delaware v. William Matthews, Builder, Inc., Del. Supr., 303 A.2d 648, 650 (1973). The mere titling of an order as a "Final Order" is not dispositive of its finality for purposes of appeal. Gaffin v. Teledyne Inc., Del. Supr., No. 178, 1991, Moore, J. (Aug. 23, 1991) (ORDER). In its May 26, 1992 order the Court of Chancery expressly retained jurisdiction to award counsel fees and costs and to rule upon any matter pending as of May 4, 1992. By the clear terms of its order, the trial court intended to dispose of other matters pending before it. Notwithstanding the

designation of its order as "FINAL" the Court of Chancery's order of May 26, 1992 must be viewed as interlocutory.

(4) This Court's authority to receive appeals in civil cases from interlocutory orders of a trial court must be exercised within the limits of Supreme Court Rule 42. Absent compliance with Rule 42, this Court must decline to exercise its appellate power. Stroud v. Milliken Enterprises, Inc., Del. Supr., 552 A.2d 476, 481-82 (1989). Since the appellants made no effort to comply with provisions of Rule 42, this Court has no option other than to dismiss the appeal.

NOW, THEREFORE, IT IS ORDERED pursuant to Supreme Court Rules 29(b) and 42 that this appeal be, and the same hereby is

DISMISSED.

BY THE COURT

/s/ Joseph Walsh
Justice

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 20 May 1992

AMENDED FINAL ORDER AND JUDGMENT

This 20th day of May, 1992, after trial in this case and post trial briefing, in accordance with the Memorandum Opinion issued by the Court of April 22, 1992.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, DECREED AND DECLARED THAT:

(a) The defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or participation with them, including, but not limited to, Rev. Thomas E.

Moon and Rev. Jonah I. Lindsay, are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of the properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") located at West Ninth and Franklin Streets, Wilmington, Delaware, 125 West 38th Street, Wilmington, Delaware, and Mount Olive cemetery found on Lancaster Avenue in New Castle County, Delaware. Said quiet operation, use, enjoyment and governance resides solely in the Mother Church, its duly elected trustees, its members, and their successors.

(b) The nine duly elected incumbent trustees of the Mother Church are declared to be Morris A. Comegys, Sara B. Gardner, Mary K. Walker, Jane J. Gibbs, John J. Jackson, Lydia C. Watson, Anna B. Cassidy, Lydia Clayton, and Patricia Wallace.

(c) The members of the Mother Church as of April 9, 1991, are the 229 persons listed in Plaintiffs' Trial Exhibit 20.

(d) The defendants and all others identified in paragraph (a) above are enjoined and restrained from recording in the future any further deeds, encumbrances, or other documents relating to the title to the properties identified in paragraph (a) hereof.

(e) The defendants, and all others identified in paragraph (a) above, are hereby enjoined and restrained from (i) holding themselves out as having any ownership interest or control in the above identified properties and any other property of the Mother Church, and (ii) interfering with worship services, funerals or any other religious practices conducted by that corporation.

(f) The Indenture, dated April 6,

1991, between the Mother Church and the Conference of African Union First Colored Methodist Protestant Church recorded with the office for the Recording of Deeds in and for New Castle County, Delaware, in Book No. 1160, page 179, is hereby declared null and void ab initio. Plaintiffs shall record this Order with said office and cause this Order to be so indexed so that the records of the Recorder of Deeds will reflect the invalidity of that Indenture.

(g) The counterclaim filed by the defendants is dismissed with prejudice.

(h) The Court retains jurisdiction to determine any applications or matters pending as of May 4, 1992. Plaintiffs shall make any application for fees and costs in this action within 30 days from the entry of this Order.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 20 May 1992

Jacobs, Vice Chancellor

MEMORANDUM OPINION

During the course of a contempt proceeding against defendants' counsel, K. Kay Shearin, Esquire, it came to the Court's attention that she may have violated Chancery Court Rule 11. Because of the seriousness of the matter involved, the Court, sua sponte, directed counsel to brief that issue, and the briefing is now completed. This is the Opinion of the Court on the issue of whether Ms. Shearin

has violated Rule 11.

I.

The relevant facts are uncontroverted. This action involved a dispute over which parties owned and had the right to control the disposition of properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") -- the plaintiffs, who represent the Mother Church's Trustees; or the defendants, who are the Conference of African Union First Colored Methodist Protestant Church (the "Conference") and its presiding prelate, Bishop Delbert L. Jackson ("Bishop Jackson").

On April 19, 1991, this Court temporarily restrained the defendants from "interfering with the quiet title, operations, use, enjoyment, and governance of the [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington,

Delaware" during the days and times of the week specified in that Order. That April 19th temporary restraining Order also directed (in Paragraph (c)) that:

> The defendant [Bishop Jackson] and his agents, employees, officers, successors, assigns, and all other acting in concert with him shall permit access for the conduct of funerals and weddings as requested by the plaintiffs.

On May 15, 1991, this Court granted the plaintiffs' motion for a preliminary injunction, and continued in effect its April 19, 1991 temporary restraining Order (including the above-quoted provision) pendente lite. (See Mother Church v. The Conference, Del. Ch., C.A. No. 12055, Jacobs, V.C. (May 15, 1991.)) Thus, from April 19, 1991 through the final determination of the merits (see Mother Church v. The Conference, Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 22, 1992)), the defendants and their agents were under a Court-ordered duty to "permit access for the conduct of

funerals and weddings as requested by the plaintiffs." Until April of this year, that injunctive provision was implemented without difficulty.

When it first became necessary to schedule a funeral under that provision, plaintiff's counsel approached Ms. Shearin and asked her to contact the Reverend Thomas E. Moon ("Reverend Moon") to make the necessary funeral arrangements. Plaintiffs' counsel proceeded in that manner because Reverend Moon had been designated as Pastor of the Mother Church (over the plaintiffs' objection) by Bishop Jackson. That is, Reverend Moon was aligned with (and, thus, was believed to be a servant, employee, or agent of) defendant Bishop Jackson, for whom Ms. Shearin was counsel of record.

When plaintiff's counsel approached Ms. Shearin, she told them that she did not want to be involved, and that they should

contact Reverend Moon directly to arrange funerals. Ms. Shearin claimed that she did not represent Reverend Moon. Indeed, when plaintiffs' counsel sought to take the deposition of Reverend Moon (who is not a party to this action), Ms. Shearin informed them that she was not Reverend Moon's attorney, that she would not be representing him, and that plaintiffs' counsel would have to subpoena Reverend Moon to obtain his testimony. (4/27/92 Contempt Hrg. Tr. at 7-9.) Accordingly, between April 19, 1991, and the trial which took place in September, 1991, plaintiffs' counsel contacted Reverend Moon directly to arrange for weddings and funerals.

Based on their understanding that Ms. Shearin did not represent Reverend Moon, Mr. Neuberger, one of plaintiffs' attorneys, also communicated directly with Reverend Moon during the trial. Specifical-

ly, on September 17, 1991, Mr. Neuberger informed Reverend Moon that he (Reverend Moon) would not be called upon to testify at the trial, and was therefore free to leave the courthouse.

On September 18, 1991, Ms. Shearin wrote a letter to the Court, irately contending -- for the first time -- that she represented Reverend Moon, and that Mr. Neuberger's direct communication with Reverend Moon was therefore ethically inappropriate.[1] Ms. Shearin also wrote a letter to Disciplinary Counsel complaining of Mr. Neuberger's conduct. (4/27/92 Contempt Hrg.

[1]Ms. Shearin wrote "Mr. Neuberger's conduct was outrageous. He knows that I represent Pastor Moon, yet he presumed to give him gratuitous legal advice. . . and prevented him from entering the courtroom to consult me. . . ." (9/18/91 Letter to Court of Ms. Shearin; emphasis added.)

Tr. at 11.) That letter prompted a formal inquiry of plaintiffs' counsel, which, however, led to no further action by Disciplinary Counsel. Given Ms. Shearin's position that she represented Reverend Moon, plaintiffs' counsel quite understandably decided that any future communications with Reverend Moon would be through Ms. Shearin.

During late March of this year, it became necessary once again to schedule a funeral. Accordingly, plaintiffs' counsel asked Ms. Shearin to contact Reverend Moon and ask him to make the appropriate funeral arrangements. However, Ms. Shearin refused, on the basis that it was not her "role" to schedule funerals and that she would not assist in that effort -- i.e., would not assist her client in complying with the Court's Order -- unless the Court directed her to do so. Accordingly, on April 1, 1992, Ms. Moore, plaintiffs' other

attorney, wrote the Court a letter recounting those facts and requesting it to intervene. Because the matter concerned compliance with the Court's preliminary injunction Order, I scheduled a telephone conference with counsel on April 2, 1992.

During that conference the Court instructed Ms. Shearin in her capacity as an officer of the Court to contact her client, Reverend Moon, to convey the plaintiffs' request to schedule the funeral. Ms. Shearin refused to obey the Court's direction, even after the Court repeated it. The Court then advised counsel that it would entertain a motion to hold Ms. Shearin in contempt. The Court also advised plaintiffs' counsel that they could contact Reverend Moon directly after first informing Disciplinary Counsel of their intended course of action and the reason why direct contact with Reverend Moon was

required.

The next day, April 3, 1992, plaintiffs' counsel reported to the Court that she had contacted Disciplinary Counsel and Reverend Moon, and that Reverend Moon had duly scheduled the funeral. That same day the plaintiffs also moved to hold Ms. Shearin in contempt of court, and the court subsequently entered an Order scheduling a contempt hearing for April 27, 1992.

In response to the contempt motion, Ms. Shearin filed a document styled "Application to Withdraw Appearance" on April 6, 1992. In that document Ms. Shearin set forth several reasons why her refusal to obey the Court's verbal order to contact Reverend Moon was not a contempt of court. One of those reasons was that that verbal order was not of record.[2] Another was that

[2]The April 2, 1992 telephone conference was not transcribed by a court reporter. In

> . . . Pastor Moon is the Mother Church's agent, not the Conference's, and therefore the Court was ordering me to carry messages from my client's adversary to their own agent, a direct conflict of interest under Lawyers' Rule 1.7.

(Application to Withdraw Appearance, ¶2(b).)

In other words, Reverend Moon had now become plaintiffs' counsels' client, not hindsight, it should have been. Nor was the Court's verbal order to Ms. Shearin later reduced to writing, because at that time the Court did not fully appreciate that Ms. Shearin would contend that a court order directed to one of its attorney-officers is unenforceable if it is not of record, and because by the time the Court learned that Ms. Shearin would be taking that position, the problem giving rise to the dispute had been resolved. Thus, any recorded order would at that point have been moot.

Ms. Shearin's.

At the contempt hearing Ms. Shearin rested her defense entirely upon her contention that the Court's April 2, 1992 verbal order to her was not of record. After taking the matter under advisement, the Court, by letter dated April 30, 1992, advised counsel that, for reasons unrelated to the merits, it would decline to adjudicate Ms. Shearin in contempt of court. To be sure, Ms. Shearin's conduct as an officer of the Court was inexcusable and would have been a contempt had the Court formally made its April 2, 1992 verbal order of record. However, the sparse case authority on the subject made it not altogether clear whether that verbal order could support a contempt finding. (See 4/30/92 Letter of Court to Counsel.) The Court concluded that instead of resolving that uncertainty in the contempt context,

it would be more productive to address frontally the conduct of counsel that had caused the underlying problem to begin with, i.e., Ms. Shearin's inconsistent litigating positions concerning her legal representation of Reverend Moon. Because those positions were both subjects of a "pleading, motion [or] other paper of a party . . . signed by [an] attorney of record," that conduct implicated, and could be addressed under the rubric of, Chancery Court Rule 11.

II.

The sole issue is whether Ms. Shearin's inconsistent positions concerning her representation of Reverend Moon (as set forth in her September 18, 1991 letter to the Court, and in her April 6, 1992 Application to Withdraw Appearance) formed the basis of a Rule 11 violation. I conclude that they did.

A principal purpose of Rule 11 is to create strong incentives for an attorney or a party not to sign and file a "pleading, motion, or other paper" without first having made reasonable inquiry and being satisfied that the pleading or other document is "well grounded in fact" and "warranted by existing law" or a good faith argument for a change in the law. Rule 11 also proscribes the filing of any document of a party signed by an attorney for "any improper purpose." These objectives are implemented by the following language which forms the core of the Rule:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase

> in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party . . . the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

I conclude, specifically, that the signing and filing of the Application to Withdraw Appearance violated Rule 11 for the following reasons:

1) Ms. Shearin's positions concerning Reverend Moon, in her September 18, 1991 letter to the Court and in her application to Withdraw Appearance, are clearly inconsistent. In the former document Ms. Shearin took the position that "I represent Pastor Moon." In the latter she stated that Pastor Moon was "the Mother Church's agent," i.e., the agent of "my client's ad-

versary." That statement necessarily meant that Ms. Shearin did not (because ethically she could not) represent Reverend Moon.[3] Since they cannot be reconciled, one of those mutually contradictory positions must be unfounded.

2) The record reveals no basis to conclude that Ms. Shearin's September 18, 1991 letter to the Court was without factual or legal basis. Although Reverend Moon was a-

[3] If Ms. Shearin represented Reverend Moon as she stated in her September 18, 1991 letter to the Court, there would be no ethical prohibition against her contacting Reverend Moon to implement this Court's preliminary injunction Order. Therefore, for Ms. Shearin to claim that she could not ethically contact Reverend Moon to schedule the funeral, she necessarily must have been asserting that she did not represent Reverend Moon.

ligned with -- indeed was answerable to -- defendant Bishop Jackson, his role as Pastor included dealing with a congregation that was largely hostile to him. Accordingly, it is not implausible that Reverend Moon might have desired to retain Ms. Shearin to represent him either separately or as the defendants' agent. In any event, I am unable to conclude that Ms. Shearin's September 18, 1991 statement to the Court that she represented Reverend Moon was unfounded. I therefore will assume that that statement was true, notwithstanding the position Ms. Shearin previously took when plaintiffs' counsel sought to depose Reverend Moon.

3) However, the record does reveal that Ms. Shearin had no basis in fact or law to contend in her Application to Withdraw appearance that Reverend Moon was the plaintiffs' agent. To the contrary, the undis-

puted record shows that Reverend Moon had been thrust upon the plaintiffs as their Pastor, against their wishes, by defendant Bishop Jackson. Reverend Moon's deposition made it abundantly clear that he was in no sense an agent of the plaintiffs, and Ms. Shearin has shown no basis in fact for contending otherwise. One must infer that that statement was designed to avoid a contempt finding, by suggesting that because Ms. Shearin did not represent Reverend Moon, she could not validly be ordered to contact him.

4) Ms. Shearin has made no effort to reconcile these two conflicting positions in any intelligible way. Indeed, absent an intervening change in the lawyer-client relationship between Reverend Moon and Ms. Shearin, there is no way those opposite statements can be reconciled.[4]

- -

[4]Ms. Shearin does not even argue that any

Accordingly, insofar as the Application to Withdraw Appearance represents that Reverend Moon was the plaintiffs' agent and that Ms. Shearin was ethically prohibited from contacting him, it was not "well grounded in fact" or "warranted by existing law" within the meaning of Rule 11. In fact, Ms. Shearin was Reverend Moon's attorney and therefore she could ethically have contacted him to schedule the funeral.

Although the Court wishes it could do such change ever occurred, i.e., that she ceased to represent Reverend Moon after September 18, 1991. On the contrary, in her letter to the Court in opposition to a Rule 11 adjudication she stated "I am the Pastor's lawyer. . . ." As previously noted (see n. 3, supra), since Ms. Shearin was Reverend Moon's lawyer, there is no reason why she could not have contacted him to schedule the funeral.

otherwise, it is unable to view this conduct as merely a product of a well-intended but mistaken error of judgment. There is no claim, let alone evidence, that Ms. Shearin made an innocent error of judgment. Rather, her conduct lamentably evidences a pattern of playing "fast and loose" with opposing counsel and, in this instance, with the Court as well. Ms. Shearin conveniently and alternatively has claimed to be -- and not to be -- Reverend Moon's counsel whenever it suited her immediate litigation purpose. Consistent with that approach, she also advised plaintiffs' counsel that she would not contact Reverend Moon unless the Court ordered her to do so, but when the Court did, she then refused to obey the Court's verbal order. That conduct created needless delay in implementing the Court's preliminary injunction provision regarding the sche-

duling of funerals, and it served only to harass the plaintiffs. Such behavior is capricious and unacceptable, and is wholly inconsistent with the high standards of conduct expected of officers of this Court.

For these reasons the Court further concludes (again, reluctantly) that the Application to Withdraw Appearance also violated Rule 11 because it was filed for an "improper purpose," namely, to harass and vex the opposing parties.

Given the nature of the Rule 11 violation, the Court imposes the following sanctions:

1) Ms. Shearin shall pay plaintiffs the reasonable attorneys' fees incurred by plaintiffs by reason of her Application to Withdraw Appearance; and

2) a copy of this Opinion shall be forwarded to Disciplinary Counsel of the Board of Professional Responsibility for such in-

vestigation and further proceedings as Disciplinary Counsel deems warranted. See Rules 3.3(a)(1) and 3.4(c) of the Delaware Lawyers' Rules of Professional Conduct.

IT IS SO ORDERED.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 22 April 1992

Jacobs, Vice Chancellor

MEMORANDUM OPINION

This is an action for declaratory and injunctive relief, which the plaintiffs filed on April 18, 1991, to establish their ownership rights in certain church properties. The plaintiffs are Mother African Union First Colored Methodist Protestant Church (the "Mother Church"), a church incorporated in Delaware, and two of the Mother Church's Trustees, who sue individually and on behalf of a class of other

persons similarly situated. The defendants are The Conference of African Union First Colored Methodist Protestant Church, a Delaware corporation (the "Conference"), and its Bishop, Delbert L. Jackson ("Bishop Jackson").

On April 19, 1991, the Court entered a temporary restraining order prohibiting the defendants from "interfering with the quiet title, operation, use, enjoyment and governance of The [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington, Delaware" during the days and times specified in that Order. One month later the Court granted the plaintiffs' motion for preliminary injunctive relief, and continued the temporary restraining order in effect until further order of the Court. See Mother Church v. The Conference, Del. Ch., C.A.No. 12055, Jacobs, V.C., Mem.Op. [A024] (May 15, 1991). On September 16

and 17, 1991, a two-day trial on the merits took place, after which the parties submitted post-trial briefs. This is the decision of the Court on the merits after trial.

I.

The facts underlying the present dispute are narrated in detail in the Court's May 15, 1991 preliminary injunction Opinion. See id. [A083-89]. To avoid needless repetition, that May 15, 1991 Opinion is made an Appendix to, and incorporated by reference in, this Opinion. Having considered the trial testimony and the submissions of counsel, I find nothing that warrants altering the factual findings of the May 15, 1991 Opinion in any respect. Accordingly, the facts as preliminarily found in that Opinion are finally found to be the facts upon which this Court's final judgment rests. The Court

thus finally determines that (i) the power to control the disposition of the Mother Church's physical properties is vested solely in the Mother Church's Trustees and its membership, subject to the Mother Church's Articles of Association and by-laws, (ii) that power has not been ceded to, or in any way superseded or supplanted by, the Conference or Bishop Jackson, and (iii) none of the properties of the Mother Church have been validly disposed of, or in any form conveyed to, the Conference.

Unfortunately, that determination does not dispose of all issues in this case. Left undecided in the Court's previous Opinion were "the identity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference." Id. [A097]. Those questions implicate the further question of whether the Conference has any power to

influence the "manner and disposition of the Mother Church's properties." Id. [A-097]. The defendants argue that even if the power to control the Mother Church's properties and other activities is found to reside in the Trustees, the defendants are still entitled to judgment because the plaintiffs (and the other Trustees) are no longer the Mother Church's lawful Trustees. Rather (the defendants argue), the lawful Trustees are the persons that Bishop Jackson and the Conference have selected to occupy those positions. Because the plaintiffs hotly dispute that claim, the Court addresses those issues in Part II, infra, of this Opinion.

The plaintiffs contend that they are also entitled (i) to have this action certified as a class action, (ii) to a determination that the defendants are in contempt of court, and (iii) to an order di-

recting the defendants to pay the plaintiffs' attorneys' fees and costs. The Court considers those matters in Part III, IV, and V, respectively, of this Opinion.

Finally, the defendants advance several counterclaims and procedural issues, and in that connection they contend that they are entitled to have this action certified as a defendant class action. The Court addresses those matters in Part VI of this Opinion.

II.

To determine who are the Mother Church's lawful Trustees and members, some legal background is helpful. In Jones v. Wolf, 443 U.S. 595 (1979), the United States Supreme Court gave state courts a choice between (at least) two methods of resolving church property disputes that do not require those court to adjudicate religious controversies. First, if the

church is "hierarchical" in nature, a state court may defer the resolution of the controversy to an authoritative tribunal established by the church. Alternatively, whether or not the church is hierarchical, a state court may resolve the property dispute on the basis of "neutral principles of law." Id. at 597, 602-10. Both approaches are consistent with the Religion Clauses of the First Amendment to the United States Constitution. Id.

In its preliminary injunction Opinion, this Court chose to follow the "neutral principles of law" approach.[1] In so doing

[1] That choice was ultimately vindicated by the evidence, as nothing in the trial record (other than the uncorroborated testimony of Bishop Jackson, which I find to be self-serving and not credible) supports the defendants' position that the religious denomination of which the Mother Church is

the Court considered the certificates of incorporation of the Mother Church and the Conference, deeds to the church properties, and the Historical Preface of the 1990 Book of Discipline.[2] See Mother a part, is hierarchical. Thus, there is no "authoritative tribunal of the hierarchical church" to which this Court could defer the resolution of this dispute. Jones v. Wolf, supra. Moreover, the adjudication of this property dispute does not require the resolution of any controversy concerning religion.

[2]The full title of that document is The Book of Discipline of The African Union First Colored Methodist Protestant Church and Connection in the United States of America and The World. Although that entire document was placed on record for the purposes of the preliminary injunction motion, it was not made a part of the trial record

Church v. The Conference, supra, [A082-88, A092-97]. On the basis of that record, the Court concluded (preliminarily) that there was no evidence that the Conference is legally entitled to supplant the power of the Mother Church's Trustees and

(except for the Historical Preface). The defendants, nonetheless, cited portions of that document (other than its Historical Preface) at numerous points in their Answering Trial Brief. The Court does not view the absence of this document from the trial record as significant, because it considered the Book of Discipline in depth at the preliminary injunction state and found nothing therein which entitles the Conference to supplant the power of the Mother Church's Trustees and membership to control and dispose of that Church' physical properties. See Mother Church v. The Conference, supra, at [A087-88].

membership to control the disposition of that Church's physical properties. See id. [A087-88]. As earlier noted, the defendants have shown no reason for the Court to alter its conclusion.[3]

As also noted, however, certain questions were left open, including "the iden-

[3]The defendants were afforded the opportunity to present evidence at trial in support of their contentions that "(1) the Mother Church had always held the properties in trust for the Conference, and (2) representatives of the Conference possessed the requisite authority to transfer the properties on behalf of the Trustees." Mother Church v. The Conference, supra, [A093]. But, the defendants provided no evidence that persuades the Court to alter its preliminary conclusion that neither of these contentions has merit. See id. [A-093-97].

tity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference." Id. [A097]; see also id. [A090] & n. 9. These questions raise the issue of whether (as the defendants argue) the Conference is empowered to appoint the Mother Church's lawful Trustees and to determine who are its lawful members. The defendants claim to have that power, but they adduced no credible evidence at the trial to support that claim. I therefore conclude that the named plaintiffs (and other Trustees and members of the Mother Church) re- main as lawful Trustees and members of the Mother Church. I further conclude, for the reasons which follow, that the persons found to be the lawful Trustees and members of the Mother Church have validly disaffiliated themselves and the Mother Church from the Conference.

The plaintiffs suggest that the Court may resolve the disaffiliation issue by reference to Delaware corporation law. (See Pl. Trial Br. at 27-34; Pl. Rep. Post-Trial Br. at 10.) Specifically, the plaintiffs cite 8 Del. C. §215(c), which provides that:

> Unless otherwise provided in this chapter, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation, one-third of the members of such corporation shall constitute a quorum at a meeting of such members, and the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by this chapter, the certificate of incorporation or bylaws.

Id.

Neither the Mother Church's Articles of

Association (i.e., its certificate of incorporation) nor its bylaws prescribes general quorum standards for action by Church members (as opposed to quorum standards for certain specified actions, such as alienation of Church property). Therefore, the plaintiffs argue that by virtue of §215(c), the vote to disaffiliate was valid, since 82 of 229 members, representing 35.8% of the membership (i.e., greater than one-third), were present at the meeting called to vote on that issue; and 68 of those present, representing 82.9% of those in attendance (i.e., greater than a majority), voted to disaffiliate. (Trial Trans. at 254.) The plaintiffs also argue that a majority of the Mother Church's members subsequently ratified the earlier vote to disaffiliate. (See Pl. Exh. 2.)

Assuming (without deciding) that a membership vote was required in order to dis-

affiliate the Mother Church from the Conference,[4] the plaintiffs have established that the membership vote here met the requirements of §215(c) and therefore was valid. In addition, a majority of the

[4]The parties join issue on whether the requisite membership vote to disaffiliate was obtained, and thereby at least tacitly suggest that a membership vote was required. However, as the ensuing discussion of Article 6th of the Mother Church's Articles of Association demonstrates, it is not entirely clear that a membership vote was needed to disaffiliate the Mother Church from the Conference. That Article indicates that a Trustee vote to disaffiliate may have been all that was required. The Court need not resolve this issue, though, because even if a membership vote was required, the membership vote obtained here was legally sufficient.

Mother Church's total membership later ratified the membership vote to disaffiliate (although it is not clear whether that was accomplished at a formal meeting called for that purpose). The defendants' only direct response to this analysis is to assert that "82 members was not a quorum, being fewer than half the members." (Def. Ans. Trial Br. at 13.) Again, the defendants provide no support for that contention, which contradicts the express language of §215(c).

The defendants next assert that those members of the Mother Church who voted to disaffiliate are no longer lawful members (or, where applicable, Trustees). The defendants rest that position on their interpretation of Article 6th of the Mother Church's Articles of Association which (they say) provides that "if some members refused to continue following the bylaws and regulations, but any members main-

tained those rules, then the dissidents would cease to be members, and the faithful minority would constitute the membership." (Id. at 13, 19.) From this the defendants conclude that those members who voted for disaffiliation "were no longer members," and that those members who voted against disaffiliation "were the Mother Church congregation then, and they were the ones who elected the new trustees whose names Pastor Moon submitted." (Id. at 13.) That argument is entirely meritless.

First, the defendants cite no credible evidence, nor can the Court locate any, that supports a finding that any valid election of new Mother Church Trustees ever occurred. See Mother Church v. The Conference, supra, [A089] & n. 7. On that basis alone, it must be concluded that the lawful Trustees of the Mother Church are the named plaintiffs and the other Trustees

listed in Plaintiffs' Exhibit 1.

Second, any effort by the defendants' to depose the plaintiffs as Trustees was legally ineffective, because Article 6th of the Mother Church's Articles of Association does not support the defendants' argument that the Mother Church's members and Trustees are no longer its lawful members and Trustees. Article 6th pertinently states that:

> . . . if it happens that the Members [of the Mother Church] shall become divided in opinion and a majority of them shall be unwilling to be governed by the Rules and principles that this Church is founded on, such of them so swerving from the true principles thereof shall be no longer Members of said [Mother Church], and if there should happen to be no more . . . [illegible] . . . of the Members of this Corporation than one maintaining the Rules that one shall hold the right and prerogative of the said Church. And that the By-Laws and regulations which shall be made by the Trustees from time to time together with these Articles of Association shall be deemed & taken to be; and shall be the true foundation of said Church, and the foundation on which the said Corporation shall exist.

(Pl. Exh. 3.)[5] The defendants interpret Article 6th to mean that those members who voted against disaffiliating from the Conference are now the only "true" members of the Mother Church. They reason as follows: First, Article 6th provides that the "true foundation of the church shall be the "By-Laws and regulations made by the Trustees . . . together with these Articles of Association." Second, the "bylaws" being referred to in article 6th are the by-laws of the Conference, i.e., the Book of Disci-

[5]The quoted portion of Article 6th differs from that which appears in the transcribed version introduced as Plaintiffs' Exhibit 3. A review of the original handwritten Articles of Association (on microfilm) reveals that errors in transcription, including the omission of several words, found their way into that particular trial exhibit.

pline. Third, those members who voted to disaffiliate from the Conference were of necessity (and in the language of Article 6th) "unwilling to be governed by the Rules and principles that this Church is founded on." Therefore, they "shall be no longer Members of said [Mother Church]," leaving only those members who voted against disaffiliation as the lawful members of the Mother Church.

That argument fails of its own weight, because the reference in Article 6th to "bylaws" can only be to the bylaws of the Mother Church itself, not those of the Conference. That must be so, since the Conference did not even exist at the time the Mother Church adopted its Articles of Association, including Article 6th. See Mother Church v. The Conference, supra, [A095] & n. 13.

Moreover, Article 6th affirmatively

established the legitimacy of the plaintiffs' position, not the defendants' position. That Article evidences that the founders of the Mother Church foresaw the possibility of a schism within the Church, and the problems a schism would create in both the temporal and spiritual realms if more than one group claimed to be the "true" Church. The final sentence of Article 6th shows that were such a division to occur, the bylaws and regulations adopted by the Mother Church's Trustees (along with the Articles of Association) would be the "true foundation" of both the Church and the corporation, i.e., would govern the resolution of that controversy. The Court has already concluded that the plaintiffs and other persons listed in Plaintiffs' Exhibit 1 are the lawful Trustees of the Mother Church. Because those Trustees voted unanimously to disaffiliate from the

Conference (Pl. Exh. 1), that act of disaffiliation was legally valid and effective by virtue of Article 6th. Moreover, because the defendants' "membership-identity" argument is without merit, it follows that the members of the Mother Church (at least as of the time they voted to disaffiliate) are (or were) the 229 persons listed in Plaintiffs' Exhibit 20, as I have already concluded above.

To summarize: the Mother Church, its Trustees, and its members (all of whom lawfully retain their positions) have the exclusive power (subject to the Mother Church's Articles of Association and bylaws) to control and dispose of the Church properties. They have not transferred those properties to the Conference or any one else. The Trustees (and, to the extent necessary, the members) have validly voted to disaffiliate the Mother Church from the

Conference. Finally, the defendants have shown no basis to alter the findings in this Court's May 15, 1991 Opinion that "(a) the Mother Church owns the properties at issue, and (b) the April 6, 1991 deed purporting to transfer those properties to the Conference was void ab initio." Mother Church v. The Conference, supra, [A093].

III.

The plaintiffs seek to have this action certified as a class action pursuant to Chancery Court Rule 23. The class is said to consist of the 229 persons who were members of the Mother Church immediately before the vote to disaffiliate. (See Pl. Exh. 20.) The apparent reason for seeking class certification is so that the Court's merits determination will bind all members of the Mother Church, including those who voted against disaffiliating from the Conference. That, in turn, would obviate pos-

sible future challenges to (and potentially inconsistent determinations regarding) the Mother Church's ownership of the properties in question. For the reasons which follow, the plaintiffs are entitled to have this action certified as a class action.

To maintain a class action under Rule 23, the plaintiffs must establish all four prerequisites of Rule 23(a) and at least one of the three requirements of Rule 23 (b). The four prerequisites of Rule 23(a) require the plaintiffs to demonstrate that:

> . . . (1) the class is so numerous that joinder of all members is impracticable, 2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The proposed class here easily meets those requirements. First, joinder of all members is impracticable because the proposed class would consist of 229 persons.

Coca-Cola Bottling Co. of Elizabethtown, Inc. v. Coca-Cola Co., D.Del., 95 F.R.D. 168, 174 (1982);[6] Weiner & Assoc. v. Krapf, Del.Supr., 584 A.2d 1220, 1225 (1991). Second, there are questions of law and fact (including who are the Mother Church's lawful Trustees and members) that are common to the class. Id. Third, the plaintiffs' claims are typical of those of the class, since they arise from the same events and are based on the same legal theories. Id. Fourth, the plaintiffs are adequate class representatives, since their interests are

[6]Chancery Court Rule 23 is substantially similar to Rule 23 of the Federal Rules of Civil Procedure, and accordingly federal court interpretations of that rule are persuasive authority. Nottingham Partners v. Dana, Del.Supr., 564 A.2d 1089, 1094 (1989); Hoffman v. Cohen, Del.Supr., 538 A.2d 1096, 1097-98 (1988).

not antagonistic to -- indeed, they are aligned with -- the interests of the class.[7] Id. at 1225-26. Adequacy of representation is also sometimes determined by reference to the plaintiffs' counsel. Ortiz v. Eichler, D.Del., 616 F. Supp. 1046, 1058 (1985). In this case the plaintiffs' counsel are highly qualified and experienced, and have ably conducted this litigation.

The plaintiffs have also satisfied two

[7]The defendants assert that "the named plaintiffs have shown such a profound lack of understanding of the issues that they are not qualified to represent the class members' interests adequately." (Def. Ans. Trial Br. at 22.) I conclude otherwise. The defendants provide no support for that argument, and the plaintiffs' trial testimony demonstrates that the named plaintiffs have a fully-informed understanding of the nature of this case.

of the requirements of Rule 23(b). First, to permit members of the proposed class to prosecute separate actions might create inconsistent results that would establish incompatible standards of conduct for the parties opposing the class (i.e., the Conference and Bishop Jackson), and that could impair the ability of other class members to protect their interests in the Mother Church. Manifestly, if those Mother Church members who voted against disaffiliation were allowed to prosecute separate actions, that would create a potential risk of adjudications inconsistent with that being rendered here. See Rule 23(b)(1); Weiner & Assoc., 584 A.2d at 1226. Second, final injunctive relief prohibiting the defendants from interfering with the plaintiffs' title in and enjoyment of the properties in question is necessary and appropriate in these circumstances. See Rule 23(b)(2);

Weiner & Assoc., 584 A.2d at 1226-27; Nottingham Partners v. Dana, Del.Supr., 564 A.2d 1089, 1095 (1989).

The defendants oppose class certification on the ground that the plaintiffs lack standing to bring this action. (See Def. Ans. Trial Br. at 14-15, 22-23.) But the defendants' argument rests on their position concerning who constitutes the Mother Church's lawful Trustees and members -- a position that the Court has already rejected. Since the plaintiffs have already been found to be members of the Mother Church, they have standing to bring this suit in that capacity as a matter of law. Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 113 (1952); Watson v. Jones, 80 U.S. 679, 714 (1872).[8]

[8]The defendants also argue that the Mother Church was prohibited by its governing doc-

For all of these reasons, this action will be certified as a class action.[9]

IV.

The plaintiffs next request this Court - - -

to adjudicate that the defendants and their counsel are in civil contempt of Orders of this Court for three separate activities: (A) filing and prosecuting a lawsuit in the United States District Court for the District of Delaware against the Mother Church's Trustees in the name of St. Paul's African Union First Colored Methodist Protestant Church of Washington, D.C. ("St. Paul's Church"); (B) improperly using the Mother Church facility during a time that other members were entitled to use that facility in accordance with this Court's temporary restraining order; and (C) publishing defamatory material that had been placed under seal by order of this Court. By way of sanctions, the plaintiffs urge that the defendants be fined and ordered to pay the plaintiffs' past and future legal costs, at least for defending the District Court litigation described below.

For the reasons which follow , I find that the conduct of defendants and their counsel, while in many respects bizarre, does not amount to civil contempt.

The purpose of a civil contempt determination is to coerce obedience to a court's order. Thus, a civil contempt sanction is coercive or remedial in nature, as distinguished from punitive, which is the nature of criminal contempt.[10] Delaware State Bar Ass'n v. Alexander, Del. Supr., 386 A.2d 652, 665 (1978); State v. Mancari, Del.Supr., 223 A.2d 81, 82 (1966) (In a civil contempt proceeding, the "keys to the jail are in defendant's hands."). Thus, for the plaintiffs to establish a civil contempt, they must show that the defendants violated an order of this Court, and that the sanction they seek is coercive

[10]The plaintiffs here do not seek a criminal contempt determination.

or remedial in nature.

The sanctions that the plaintiffs seek in connection with items (B) and (C), supra, fail to meet those requirements. In both instances the plaintiffs would have the defendants fined and ordered to pay the plaintiffs' legal costs. In these circumstances those sanctions necessarily are punitive, because they are designed to punish disobedience of this Court's order. They cannot be remedial or coercive, since the complained-of acts are now accomplished and cannot be undone or otherwise remedied by any sanction that this Court might impose. Delaware State Bar Ass'n, 386 A.2d at 665.

Moreover, the complained-of acts labeled as (A) and (C) did not violate a preexisting order of this Court. On June 17, 1991, the defendants filed an application to certify an interlocutory appeal from this Court's Order granting a preliminary